THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P. LAKSHMANA REDDY

W.A.No. 1445 of 2005

Dt:23.08.2005

Between:

P.Nageswar Rao

.. Petitioner

and

The Superintending Engineer and another.

.. Respondents

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P. LAKSHMANA REDDY

W.A.No. 1445 of 2005

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JUDGMENT:(per the Hon'ble Smt. Justice T. Meena Kumari)

This writ appeal has been filed, assailing the order, dated 05.07.2005, in W.P.No.5108 of 2001 passed by the learned Single Judge.

The case of the appellant is that while he was working in the Office of the Assistant Accounts Officer, E.R.O., Chirala, a crime was registered against him for the offence under Section 302 I.P.C. He was suspended from service

on 02.06.1992 and consequent upon the conviction and sentence to undergo imprisonment for life, he was dismissed from service with effect from 04.11.1997. Aggrieved by the said Judgment, the appellant preferred Crl.A.No.1465 of 1997 before this Court. A Division Bench of this Court, through its Judgment, dated 28.07.1999, set aside the Judgment of the trial Court and acquitted the appellant. Thereupon, the appellant was reinstated into service *vide* proceedings of the first respondent, dated 14.06.2000, as L.D. clerk in the office of the second respondent. Therefore, the appellant submitted representations to the respondents requesting them to regularize his services during the period of suspension ie. from 02.06.1992 to 04.11.1997, by treating the said period as if he was 'on duty', and to pay the wages etc., but the same were rejected. Hence, he filed the writ petition seeking *mandamus* declaring the proceedings of the first respondent, dated 19.08.2000, as illegal and arbitrary.

The learned Single Judge, after a careful analysis of the material placed before this Court, held that the period from the date of dismissal of the appellant till reinstatement into service was already treated as dies-non, and hence permitted the appellant to make an application and directed the respondents to consider the application and sanction the leave that is available to the credit of the appellant, in accordance with law and accordingly disposed of the writ petition, through the order under appeal.

The learned counsel for the appellant submits that since the conviction and sentence recorded by the trial Court was set aside by this Court, the appellant was re-instated into service. According to him, the period of suspension of the appellant from 02.06.1992 to 04.11.1997 shall be treated as if the appellant was 'on duty'. The learned counsel finds fault with the order passed by the learned Single Judge.

On the other hand, the learned counsel for the respondents contends that the period of suspension of the appellant was treated as dies-non and taking the said ground into account the learned Single Judge has rightly disposed of the writ petition and hence no interference need be warranted in the Order under appeal.

It is not in dispute that the appellant was convicted for the offence under Section 302 I.P.C. and sentenced to undergo imprisonment for life. However,

this Court set the said sentence aside. Consequently, he was reinstated into service as the L.D. Clerk in the office of the second respondent. Since the appellant was under suspension from 02.06.1992 to 04.11.1997, he was directed to submit the leave application to regularize the said period, as per the Rules governing the service conditions. The learned Single Judge also directed the appellant to make an application to the respondents, since the period from the date of dismissal till reinstatement into service was treated as dies-non. On such application being made, the respondents are directed to consider the same and sanction the leave in accordance with law. We are also of the opinion that since the period of suspension was treated as dies non, the same has to be regularized so as to enable the appellant to get all the pensionary benefits. In that view of the matter, we do not see any grounds to differ with the finding arrived at by the learned Single Judge. Therefore, in our considered view, the Order under appeal deserves no modification.

The writ appeal is accordingly dismissed at the threshold.

(T. Meena Kumari.J)

(P. Lakshmana Reddy.J)

ksld/kdl

Dt.23.08.2005